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Via Hand Delivery

Mary L. Cottrell, Secretary
Department of Telecommunications and Energy
One South Station
Boston, MA 02110

Re: Docket No. 98-57 – Phase III
Verizon's Appeals of the October 18, 2002, Procedural Order

Dear Secretary Cottrell:

I write with a brief response to the material misstatements made by Verizon in a letter to the Department concerning this matter dated November 15, 2002.

First, Verizon's suggestion that state commissions are postponing any independent consideration of unbundled access to NGDLC-fed loops until after the FCC completes its triennial review is incorrect. Just two days ago the New York PSC rejected Verizon's request to delay review of state policy regarding NGDLC unbundling. The enclosed procedural order issued by Administrative Law Judge Linsider correctly finds that "there is no reason to assume that the outcome" of the FCC's triennial review "will foreclose [state commissions'] involvement in these matters or make this proceeding moot." Given that Verizon's announced rollout of NGDLC-with-ATM loops is on a notably faster schedule in Massachusetts than in New York, the need for prompt Departmental review to ensure that Verizon does not obtain an unfair and insurmountable first-mover advantage is even greater here.

Second, Verizon's accusation that "AT&T is being disingenuous because it has argued before the FCC against individual state determinations of unbundling requirements" is based on a patently false premise. Verizon materially misrepresents AT&T's position before the FCC. AT&T has urged the FCC to retain an appropriate minimum set of nationwide unbundling requirements. However, AT&T has also expressly reminded the FCC that (i) states have full legal authority under 47 U.S.C. § 251(d)(3) to impose additional unbundling requirements; and (ii) state commissions are in a much better position than the FCC to determine the need in particular places for non-discriminatory access to UNEs in addition to the bare minimum that the FCC may prescribe on a nationwide basis. AT&T reiterated these points to the FCC most recently in the enclosed letter from AT&T's General Counsel to the FCC Commissioners dated November 13, 2002, at pages 4-7. Verizon was well

aware of this November 13 submission to the FCC when it filed its November 15 letter with the Department. Verizon's deliberate misrepresentation of AT&T's position is inexcusable.

For the reasons stated in AT&T's opposition, Verizon's repeated assertion that consideration by the Department of unbundling obligations "is unlawful under the Telecommunications Act" is incorrect, and cannot be squared either with the express terms of that statute or with the FCC's UNE Remand Order. Verizon's effort to forestall or even rollback competition in the residential services market in Massachusetts by denying unbundled access to NGDLC-fed loops would adversely affect consumers in Massachusetts. Verizon's attempt to do so by delaying the Department's previously announced investigation of the issues addressed in the October 18, 2002, procedural order even as it accelerates its NGDLC roll out for its own commercial use should be rejected. The substantive claims with which Verizon concludes its November 15 letter concern disputed factual issues that can only be resolved through expeditious investigation, including discovery, testimony, and briefing.

Thank you.

Very truly yours,

Kenneth W. Salinger

enclosures

pc: Hearing Officer
Service List

bpc: Harry Davidow
Patricia Jacobs
Cynthia McCoy